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IN THE

Supreme Court of the United States

OCTOBER TERM, 1935

No. 709

PAUL V. McNUTT, Governor of the State of Indiana; PHILIP LUTZ, Attorney General of Indiana; RICHARD A. McKINLEY, Director of The Department of Financial Institutions of the State of Indiana; OSCAR P. WELBORN, HARVEY B. HARTSOCK, C. M. SETSER, MYRON GRAY and ROBERT BATTON, Members of the Commission of Financial Institutions of the State of Indiana; HERBERT M. SPENCER, Prosecuting Attorney of the Nineteenth Judicial Circuit of the State of Indiana,

Appellants,

v.

GENERAL MOTORS ACCEPTANCE CORPORATION OF INDIANA, INCORPORATED,

Appellee.

MEMORANDUM RE JURISDICTION

JOHN THOMAS SMITH,
PHILLIP W. HABERMAN,
DUANE R. DILLS,
ANTHONY J. RUSSO,
STANLEY B. ECKER,
PAUL Y. DAVIS,
Counsel for Appellee.

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MEMORANDUM RE JURISDICTION

I

THE RECORD ESTABLISHES THAT THE MATTER IN CONTROVERSY EXCEEDS, EXCLUSIVE OF INTEREST AND COSTS, THE SUM OR VALUE OF $3,000.

A. Although defendants denied the allegation in the complaint that the matter in controversy exceeds the sum of $3,000 in value, the Record is barren of any evidence in support of their denial: defendants, therefore, failed to sustain the burden, which is theirs, of defeating jurisdiction.

The Complaint alleges, in paragraph Second, that the matter in controversy exceeds the sum of $3,000 in value,

exclusive of interest and costs (G. M. A. C. Record, p. 2). Appellants denied this allegation (G. M. A. C. Record, p. 32).

In support of the general jurisdictional allegation in paragraph Second of the Complaint, Appellee alleged and proved the following specific facts (Complaint paragraph Ninth; G. M. A. C. Record, p. 6; and Findings 1, 2 and 36, G. M. A. C. Record, pp. 45-47 and 70): The net worth of Appellee's business is in excess of $50,000. During the calendar year 1934 it purchased retail instalment contracts in Indiana, aggregating in excess of $7,000,000, and the value of such purchases for the first six months of 1935 was in excess of $4,000,000. During the calendar year 1934 it purchased, in Indiana, approximately 23,000 instalment sale contracts from more than 500 retail sellers. Paragraph Ninth of the Complaint contained a further allegation, which was neither admitted nor denied in the Answer (G. M. A. C. Record, p. 35, paragraph IX) that G. M. A. C. maintains offices in the cities of Indianapolis, Fort Wayne and South Bend, for which it pays yearly an aggregate rental of $13,147; and that it employs on the average 85 employees, whose aggregate salaries amount to approximately $150,000 yearly.

In further support of the general jurisdictional allegation in paragraph Second, the Complaint proceeds, in paragraph Tenth (G. M. A. C. Record, pp. 6-8) to set forth the following allegations all of which were supported by evidence introduced by Appellee in the Trial Court; that the Act (Section 15-d) limits the amount which G. M. A. C. may receive as its gross profit for the purchase of an instalment contract to a sum not exceeding the maximum "finance charge" which may be fixed by the Department of Financial

Institutions,—by prohibiting G. M. A. C. from purchasing any retail instalment contracts at a less price than the unpaid balance thereon; that the Act limits the amount which may be given by G. M. A. C. to retail sellers out of the gross "finance charge" received from retail buyers under instalment sale contracts sold to G. M. A. C. by requiring the Department to fix this maximum amount without regard to any differentiation as between contracts sold to licensees by retail sellers with recourse against such sellers, and contracts sold by retail sellers without recourse against them (Section 10); that the Act (Sections 9 and 11) restricts the sale of instalment sale contracts to those parties only who have received a license from the Department of Financial Institutions and imposes burdensome requirements with respect to the keeping and publicity of records and the payment of license and other fees (Sections 18, 19 and 20); that the Act subjects G. M. A. C. to severe and excessive liabilities, both civil and criminal for each such violation of the Act (Section 29); that these provisions of the Act create uncertainty, which will impair the efficiency of the operations and earnings of G. M. A. C. and which will render hazardous the making of any future commitments or any contracts over definite periods of time for the purchase of retail instalment contracts, and also the determination of its borrowing requirements and the obtaining of capital required in the conduct of its business. In addition, the Complaint alleges (Paragraph Seventh, G. M. A. C. Record, pp. 4 and 5) that the Act requires G. M. A. C. to obtain a license from the Department of Financial Institutions which may reject any application for license if it fails to find that the applicant can "operate its business economically and efficiently," and further alleges

that the Act contains a mandate (Section 10 of the Act) that contracts may not be sold at a higher price if sold *with recourse* or *with a repurchase agreement* than if sold *without recourse,* thereby discriminating against the business of G. M. A. C. which purchases contracts from retail sellers with a repurchase agreement (Record, pp. 48-50) and in favor of other finance companies which purchase contracts *without recourse* (Record, pp. 59-60).

Although Appellant denied the allegations of paragraph Second of the Complaint, the Record shows no evidence in support of this denial or of any of the allegations referred to in the last preceding paragraph of this Memorandum; on the other hand, the findings of fact support the jurisdictional allegations (G. M. A. C. Findings Nos. 1, 2 and 36; Record, pp. 45-47 and 70).

This Court has held that where an allegation of the jurisdictional amount is challenged, the burden of proving the lack of jurisdiction rests upon the parties challenging the jurisdiction. Thus in *Hunt* v. *New York Cotton Exchange,* 205 U. S. 322, this Court said at page 333:

> "On the issue presented by the plea the burden of proof was upon the appellant (the defendant below), and he was required to establish by a preponderance of the evidence that the amount involved was less than the jurisdictional amount."

To the same effect, see:

Healy v. *Ratta,* 292 U. S. 263, at page 271.

B. The record establishes that the value of the business of the Complainant is in excess of $3,000; the jurisdictional requirement is therefore met under the test laid down by the decisions of this Court.

The complaint alleges that the net worth of the Complainant's business is in excess of $50,000 (Complaint paragraph Ninth; G. M. A. C. Record, p. 6), and the Findings of Fact (G. M. A. C. Finding 36; Record, p. 70) support this allegation. The finding in question reads as follows:

> "The net worth of G. M. A. C.'s business is in excess of $50,000. During the calendar year 1934, it purchased retail instalment sale contracts in Indiana aggregating in excess of $7,000,000; and the value of such purchases for the first six months of 1935 is in excess of $4,000,000. During the calendar year 1934, G. M. A. C. purchased in Indiana approximately 23,000 instalment sale contracts from more than 500 dealers."

This Court has held that jurisdiction is to be tested by the value of the object or right to be protected against interference, regardless of the financial injury which might be inflicted upon the Complainant by interference with that object or right, and regardless of whether the interference arises from the acts of private parties or the acts of officers of a State. It is the value of the business and the rights of property inherent in the business the interference with which Complainant is seeking to have enjoined, which tests the sufficiency of the jurisdictional averment, and since the Record in this case establishes without contradiction that the value of Complainant's business exceeds the sum of $50,000, and that such business will be materially affected,

restricted or even suppressed through enforcement of the Act, it follows, on this test, that the jurisdictional requirement has been fulfilled.

The cases in point are the following:

Healy v. *Ratta*, 292 U. S. 263;
Hunt v. *New York Cotton Exchange*, 205 U. S. 322;
Glenwood Light Co. v. *Mutual Light Co.*, 239 U. S. 121;
Berryman v. *Whitman College*, 222 U. S. 334;
Bitterman v. *Louisville & Nashville R. Co.*, 207 U. S. 205.

In the case at bar the relief sought is an injunction against the interference with Appellee's business which will result from the enforcement of a state statute alleged to deprive Appellee of its property without due process of law. As stated by this Court in *Glenwood Light Co.* v. *Mutual Light Co., supra* (at p. 126):

> "Complainant sets up a right to maintain and operate its plant and conduct its business free from wrongful interference by defendant. This right is alleged to be of a value in excess of the jurisdictional amount, and at the hearing no question seems to have been made but that it has such value. The relief sought is the protection of that right, now and in the future, and the value of that protection is determinative of the jurisdiction."

Similarly in the case of *Healy* v. *Ratta, supra*, this Court said, at page 269:

> "Where a challenged statute commands the suppression or restriction of a business without reference

> to the payment of any tax, the right to do the business, or the injury to it, is the matter in controversy."

In the case of *Bitterman* v. *Louisville & Nashville R. Co.*, 207 U. S. 205, the same principle was enunciated by this Court, which said at page 225:

> "Besides the substantial character of the jurisdictional averment in the bill is to be tested, not by the mere immediate pecuniary damage resulting from the acts complained of, but by the value of the business to be protected and the rights of property which the complainant sought to have recognized and enforced."

Respectfully submitted,

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NOTE: Copies of this Memorandum have been mailed to Counsel for Appellant.